

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1122 of 2000

with

SPECIAL CIVIL APPLICATION NO. 7362 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

YATIN N OZA

SENIOR ADVOCATE

Versus

STATE OF GUJARAT, THROUGH

CHIEF SECRETARY

Appearance:

1. Special Civil Application No. 1122 of 2000
MR RJ OZA for Petitioner
NOTICE SERVED BY DS for Respondent No. 1, 8
 2. Special Civil ApplicationNo 1122 of 2000
MR RJ OZA for Petitioner
NOTICE SERVED BY DS for Respondent No. 1, 8
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE B.C.PATEL

Date of decision: 24/04/2000

CAV JUDGEMENT (Per D.M.Dharamadhikari, CJ)

This is a petition by the Ex-Chief Minister of the State of Gujarat stated to be in public interest for seeking directions from this Court to the State of Gujarat and its authorities for taking necessary corrective action on the report of one Shri P.C.Pandey, the then Additional Director General of Police (CID Crime Branch) and based thereon to take disciplinary action against the Police Officers, Shri Satish Verma, the then District Superintendent of Police, Jamnagar, respondent no.6 and Shri Atul Karwal, IPS Officer at that time posted at Jamnagar and presently in National Police Academy, Hyderabad.

2. The allegations in the petition are that although the Police Officers at Jamnagar had received information of terrorist activities under the leadership of Abdul Sattar Abib alias Sattar Maulana, an alleged ISI agent who had unauthorisedly smuggled through Porbandar Port into India arms and RDX powder of more than 30 crores, yet no timely action was taken by the Police Authorities at Jamnagar to arrest him and to take preventive action for spread of terrorist activities. It is alleged that the Police Officers who are guilty of serious lapses in investigating such illegal and criminal activities of ISI agents having serious repercussions on the security of the nation are being shielded by various political bosses in the State for vested personal interests. The order passed in this petition shall also decide the connected Special Civil Application No. 1122 of 2000 filed by Shri Yatin.N.Oza, who is a practising advocate of this Court and a sitting MLA from BJP Party. According to the Counsel for Shri Y.N.Oza, the necessity of filing on the same subject matter a second petition arose because despite cognisance of this case by the Court and earlier directions made by this Court in similar matter, the Government is deliberately sitting tight over the report of Shri P.C.Pandey, who now holds office of the Commissioner of Police, Ahmedabad. In his report he has found serious acts of omission and commission on the part of the respondent Police Authorities at the relevant time posted at Jamnagar. In the petition filed in public interest by Shri Yatin N Oza, the directions sought from this Court are for taking action on the report of Shri Pandey, now Commissioner of Police and as a first step

towards disciplinary action against the Police Officers (respondent no.6 to 7) by suspending them from service. Shri Yatin Oza, the petitioner in Special Civil Application No. 1122 of 2000 before approaching this Court on this present subject matter of public interest had directly filed a petition in the Supreme Court of India being No. Petition (Civil) No. 53/2000. The Supreme Court by order passed on 21.2.2000 refused to entertain that petition of Shri Y.N.Oza on the ground that the present petition being Special Civil Application No.7362/99 filed by the Ex-Chief Minister, Chabildas Mehta is being already pending in this High Court. The petition of Shri Y.N.Oza on his own statement was dismissed as withdrawn. The Supreme Court also issued directions to this Court to expeditiously deal with the present Special Civil Application.

3. At this stage, it is also necessary to mention that on the same subject matter, Special Civil Application No. 1092/99 was filed by Himmatbhai Jaisinghbhai Parmar and the Division Bench of this Court (Coram: C.K.Thakker & M.C.Patel, JJ) by an oral judgement delivered on 11.3.99 and 15.3.99 after hearing the petitioner and authorities of the State as also other respondents made the following observations and directions:-

"In view of the fact that the Learned Counsel for the petitioner had written a letter on February 16, 1999 and immediately a reply was sent by the Additional Chief Secretary, Government of Gujarat on February 20, 1999 (within 4 days) and that the Learned AGP has produced letter dated March 10, 1999 in which it was mentioned that necessary instructions were given by the Additional Chief Secretary (Home) to Mr.Pandey, Additional Director of Police, CID, Crime to complete the investigation by March 15, 1999. In our opinion, it cannot be said that there is inaction or negligence on the part of the authorities. We are therefore of the opinion that the petitioner should not be entertained at this stage and accordingly, it is rejected. The petition is therefore dismissed. No order as to costs."

4. From the above quoted portion of the order of the Division Bench of this Court in the earlier Special Civil Application No. 1012 of 1999, it would be clear that investigation report of Mr.Pandey, the then Additional Director of Police, CID Crime was awaited by March 15, 1999. The Division Bench was of the opinion and we

concur with the same, that there was no inaction or negligence on the part of the State Authorities, atleast upto 15.3.99 when the report of Shri Pandey, the then Director General of Police, CID Crime was awaited.

5. It is rather surprising and the petitioners have not been able to explain as to how the confidential report of Shri Pandey came to their possession. It is stated at the Bar that it was received by them through some of the politicians. It is not necessary for us to go into the details of the report. It suffices for us to state that in that voluminous report running into 87 paragraphs, it has been found that the Police Officers posted at Jamnagar in whose jurisdiction was the Porbandar Port, serious offences by member of International Terrorist Traitor Gang were committed and weapons worth crores of rupees were smuggled with explosives. Yet no timely action was taken to arrest the main accused. The report of Shri Pandey states that grave and serious type of misconduct has been committed and there have been gross negligence in performance of their duties by the Police.

6. On behalf of the Respondent Police Officer, it is stated that both the petitions are politically motivated and Shri Y.N.Oza has personal animosity against the 2 Officers (i.e. respondent no.5 and 6) who in a past incident of Criminal offence committed by the petitioner had boldly taken police action against him, undeterred by his political connections and status. It is submitted by the Counsel appearing for the Police Officers, by reading their reply on affidavit, that the whole inquiry was instigated by Shri Y.N.Oza and an adverse report of Shri Pandey is also an outcome of personal rivalry. The report has been made only to malign and prejudice the promotional prospects of the 2 police officers. It is submitted that the present so-called public interest litigation have an ulterior motive of maligning the past and present holders of political offices and it is mainly aimed at spoiling the service career of the 2 police officers respondent no.5 & 6.

7. On behalf of the respondent Police Officers, it is submitted that the petition should be dismissed on the sole ground that it is not a bonafide Public Interest Litigation and has been filed on personal vendetta and malice against the officers and authorities of the Government. It is submitted that this Court should not encourage such ill motivated and malicious litigation in the garb of public interest litigation. Seeking dismissal of the petition on the ground of locus standi

and that it is not a bonafide public interest litigation, reliance is placed on Malik Brothers Vs. Narendra Dadhich & Others reported in 1999 Vol. 6 SCC 552.

8. Learned Additional Advocate General S.N.Shelat appearing for the State and the Authorities has placed before us the 2 files on the subject of the Home Department of the State which we had directed to be produced before us. learned Additional Advocate General states that since the subject involves acts and omission of political and Police authorities concerning the security of the nation, the files are confidential. It is true that no privilege, as required by the provisions of Evidence Act, against disclosure of such confidential file to the opposite party has been claimed but since it is a Public Interest Litigation, we directed the Additional Advocate General to place the 2 confidential files for the perusal of the Court with the understanding that if the Court on perusal finds that there is no harm in disclosure of the contents of the file to the opposite party, the Court may adopt that course.

9. We have perused the 2 files and we are of the opinion that the subject matter is so sensitive that it would not be in the interest of the State and the security of the nation to allow its inspection by the opposite party. This Court also does not feel it proper to deal with and discuss the contents of the 2 confidential files of the Government. The Court considers it sufficient to state that the 2 confidential files placed before us do not show that the Officers of the State Government or the Executive Wing of the State Government are deliberately sitting tight on the report of Shri Pandey. So far there does not appear any attempt of either shielding or covering up the alleged lapses or misdeeds of the 2 Police Officers. We have already reproduced the operative part of the order of the Division Bench of this Court passed in Special Civil Application No. 1092 of 1999. The submission of report of Shri Pandey was awaited by 15.3.99. As held by the Division Bench in the order (supra), the authorities of the State could not be held guilty of any deliberate delay or inaction in this matter of public interest. The report of Shri Pandey was submitted on 30.3.99. On behalf of the Government dates have been chronologically mentioned to point out the action taken from time to time by the State Government pursuant to the report of Shri Pandey. On 15.5.99, the Director General of Police submitted the inquiry report of Shri Pandey, Additional Director General, CID Crime to Home Department with his comments. They were received by the Home Department on

17.5.99. On 31.7.99, the Deputy Secretary (Law & Order) submitted note on file for departmental action against delinquent officers i.e. Shri Satish Verma (DSP), Shri C.J.Singh, CPI Ranavav, Shri Sukhdevsingh Zala. It also sought advise for appropriate action in respect of role played by Shri Atul Karval, DSP and Shri Lochab, Dy. S.P.

10. On 10.8.99, the Additional Chief Secretary (Home) submitted note proposing departmental action against the delinquent officials. On 12.5.99 and 12.8.99, Chief Secretary submitted note supporting the action proposed by Additional Chief Secretary (Home). On 28.10.99, Minister of State (Home) sought discussions. On 8-9/12/99, Minister of State (Home) discussed the matter with the Chief Minister and tentative decision was taken to entrust the inquiry to a Retired High Court Judge. Between 10.12.99 to 21.1.2000, the Additional Chief Secretary (Home) held discussions with Justice S.D.Dave (Retd), Minister of State (Home) and the Chief Minister. Thereafter on 21.1.2000, a note was submitted advising that it would not be proper to refer the matter or entrust the enquiry to Justice Dave since the matter is subjudice and pending in the High Court. It is however suggested that departmental action against the officers be proposed. On 29.1.2000, the Chief Secretary concurred with the Additional Chief Secretary (Home) on the note. Between 4.2.2000 to 27.3.2000, the Chief Minister held discussions in the matter with Minister of State (Home), and with Additional Chief Secretary (Home). The latest report, when the case was taken up for hearing is, that the Government has decided to seek the advice of General Administration Department on the suggestions made by the Additional Chief Secretary, Home on 10.8.99. It is thereafter, the Additional Chief Secretary submitted a note for seeking advice of General Administration Department on the subject and the file has been sent to General Administration Department whose decision is awaited.

11. By giving a resume of the different action taken and the movement of files, Ld. Additional Advocate General submits that there is no foundation for the petitioner to allege that the Government is deliberately sitting tight over the subject and was or is trying to shield any political figures or police officers. It is submitted that before the report of Shri Pandey there was a report submitted by Shri S.K.Saikia, Special IGP Operations. The said report of Shri Saikia has taken a view different from the views and opinions of Shri P.C.Pandey. The report of Shri Pandey is adverse. There

are thus 2 conflicting reports, one by Shri S.K.Saikia & the other by Shri P.C.Pandey. It is submitted on behalf of the State that the matter involves vital questions concerning the security of the nation. The service careers of two now highly placed police officers are also involved. The issue being extremely sensitive, the State Government desires to take action with caution and due deliberation. It shall decide its future course of action after considering the cross and pons and also the weight of evidence available with the department. It is submitted on behalf of the State Government that the State Government has proceeded in the matter with necessary dispatch and if permitted it would take necessary action to protect the interest and the security of the nation. It would also not spare officers found guilty of inaction or misdeed, if any.

12. Since the necessary material including the 2 confidential files of the State Government are before us, we think that the issue of locus standi of the petitioners pales into insignificance. We would not like to dismiss the petition only because, as alleged by the respondent Police Officers, there is some personal animosity and may be a political mileage is being tried to be obtained by the 2 petitioners before us in this public interest litigation. In our considered view, the subject matter brought before us deserves serious attention of the State and its authorities, particularly the present Executive Wing of the Government. We, therefore, deliberately avoid to go into the allegations and counter-allegations made by the petitioners and the Police Officers against each other and decline to dismiss the petitions on alleged ground of locus standi of the petitioners.

13. On the prayer made in the petition filed by Shri Y.N.Oza seeking directions to the State Government to place the Police Officers of IPS cadre under suspension as a first step towards disciplinary action against them, our attention is invited to the provisions of sub-rule 1(A) of Rule 3 of All India Services (Discipline & Appeal) Rules, 1969. The relevant rule reads as under:-

"(1-A) If the Government of a State or the Central Government, as the case may be, is of the opinion that a member of the Service has engaged himself in activities prejudicial to the interests of the security of the State, that Government may -

(a) if the member of the Service is serving

under that Government, pass an order placing him under suspension, or

- (b) if the member of the Service is serving under another Government request, that Government to place him under suspension,

till the passing of the final order in the case:

Provided that, in cases, where there is a difference of opinion -

- (i) between two State Governments, the matter shall be referred to the Central Government for its decision;
- (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail."

On the plain language of the rule, we find great force in the submissions made by the Additional Advocate General on behalf of the State that the service rule is only an enabling one for the State Government to take action of suspending the member of the service against whom there is found to be evidence of involvement that they were engaged in activities prejudicial to the interest of the security of the State. It is rightly submitted that before suspending the officers, the State or the Central Government has to form an opinion that the Officers concerned were engaged in activities prejudicial to the security of the State. Whether to suspend them from service pending an inquiry is a matter within the discretion of the State Government depending upon the nature of evidence against the Government Officers. On the basis of the above quoted service rule, it would not be proper for this Court to assume the power of the State Government and direct that the 2 officers (respondent no.6 to 7) herein should necessarily be placed under suspension. Whether they should be placed under suspension or not would be a matter for the decision of the State Government and it is not open to this Court as it is not a disciplinary authority.

14. Having thus examined the contents of the confidential files and on taking into consideration the report of Shri Pandey which is now an open secret. We think that the public interest would best be served by directing the State to take a decision on the subject in its General Administration Department within an outer limit of 3 months and if Department finds the evidence and material weighty enough it shall get the matter

investigated through an independent highly placed official, may be a retired judge of High Court. This, we find necessary because there are not only allegations against the Police Officers who were posted at the relevant time at Porbandar and Jamnagar but there are also allegations against top political figures that they directly or indirectly ignored the interest of the security of the nation. An inquiry, therefore, through an independent body which can go into the acts of omission and commission of all Police Authorities and public figures therefore is necessary so that in future, such terrorist activities threatening the security and integrity of the nation are timely checked and prevented. As a result of the aforesaid discussions, we are disposing of this petition with the following directions:-

1. Let the State Government through its General Administration Department, where the file has now been sent, take a decision on the entire material and the reports received on the incidents that took place on the Porbandar Port in District Jamnagar and take appropriate measures in the interest of integrity and security of the nation and with a view to prevent recurrence of such incident. The GAD shall take a firm decision on the subject within outer limit of 3 months.
2. The State Government should also consider on the basis of the report and decision of the General Administrative Department to get an inquiry conducted through an independent investigative Agency or Commission headed preferably by a Retired High Court Judge.

It is hoped that in such a matter of vital importance concerning the security of the nation, the State Government would give no cause for allegations of inaction or delay on its part. With these directions, the petitions stand disposed of.

(D.M.Dharamadhikari, CJ)

(B.C.Patel, J)

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